

Department of Energy

970.5232-2

If the Contracting Officer directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance—Litigation and Claims" shall apply and the costs and expenses incurred by the Contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

(c) The Government shall hold the Contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

(End of clause)

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36375, 36378, 36380, July 22, 2009]

970.5231-4 Preexisting conditions.

As prescribed in 970.3170, insert the following clause:

PREEXISTING CONDITIONS (DEC 2000)

(a) The Department of Energy agrees to reimburse the Contractor, and the Contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any condition, act, or failure to act which occurred before the Contractor assumed responsibility on [Insert date contract began]. To the extent the acts or omissions of the Contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to [Insert date contract began], the Contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

(End of clause)

Alternate I (DEC 2000). As prescribed in 970.3170 (a), in contracts with incumbent management and operating contractors, substitute the following for paragraph (a) of the basic clause:

(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action,

suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date this clause was included in contract], in conjunction with the management and operation of [Insert name of facility], shall be deemed incurred under Contract No. [Insert number of prior contract].

Alternate II (DEC 2000). As prescribed in 970.3170 (b), add the following paragraph (c) to the basic clause in contracts with management and operating contractors not previously working at that particular site or facility:

(c) The Contractor has the duty to inspect the facilities and sites and timely identify to the Contracting Officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The Contractor has the responsibility to take corrective action, as directed by the Contracting Officer and as required elsewhere in this contract.

(End of clause)

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36375, 36378, 36380, July 22, 2009]

970.5232-1 Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud.

As prescribed in 970.3200-1-1, insert the following clause:

REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)

(a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the Contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the Contractor's request for advance, partial, or progress payment is based on fraud.

(b) The Contractor shall be afforded a reasonable opportunity to respond in writing.

(End of clause)

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36375, 36378, 36380, July 22, 2009]

970.5232-2 Payments and advances.

As prescribed in 48 CFR 970.3270(a)(1), insert the following clause: